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AN INDEX OF COMPARATIVE LEGISLATION

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For several years the plan of publishing an annual index or summary of foreign legislation has been under discussion among American students of political science. The Librarian of Congress has recommended that such a publication be undertaken by the United States Government, and it seems possible that his efforts in this direction may finally be successful. Information concerning foreign legislation is now difficult to obtain, and the usefulness of a publication that would make more easily available the substance of current foreign laws is well recognized.

The demand for information of foreign legislation may be said to come from three sources: (1) From practicing lawyers who handle cases involving the laws of other countries. The increasing American investments abroad and the closer social relations which have developed between the United States and foreign countries make it necessary that our lawyers should know something of the legal institutions of other nations. In our great seaboard cities lawyers have already begun to devote themselves to foreign law as a specialty, and important legal firms find it necessary to have foreign connections. (2) Our legislators are beginning to look more closely into the experiences of other countries. Statesmen are coming to see that one country may well prove a laboratory for others in the field of social legislation, and to wish to profit by foreign successes and to avoid foreign failures. Germany has gone very far in the matter of governmental insurance and in legislation for the protection of labor, and it is within these fields that we may expect future legislation in the United

States. Foreign experience has been many times appealed to in the recent discussion of railway rate regulation. The Torrens system of land registration has been borrowed almost as a whole by several of our States. (3) The field of comparative legislation has until recently been an almost unexplored one to students of political science in the United States, but they are now awake to the importance of a study of the legal institutions of other countries. The present need of the lawyer, of the legislator and of the student may be said to combine in the demand for some means of keeping informed of the current legislation of foreign countries.

As a preliminary to plans for a comprehensive index of world legislation, it may be well to review carefully what is now being done to make available to the student and to the legislator the laws of the various countries. Several publications attempt to summarize the current legislation of all countries. Each of these will be briefly reviewed.

The *Annuaire de Législation Étrangère*, issued by the French *Société de Législation Comparée*, is the oldest and best known publication in this field. It attempts to cover all countries but actually confines itself principally to the German and Latin countries of Continental Europe. The legislation of the British Colonies, of the United States, and of the countries of South and Central America is very inadequately treated. The legislative activities of each country for the year are reviewed, and full texts of the most important laws are published. The reviews of foreign legislation and translations of texts are prepared by resident members or foreign correspondents of the Society; the reviews are arranged by countries, but there is a brief subject index to each volume. The laws are usually printed within the year after the date of their

passage, but many times a longer delay occurs. The *Annuaire de Législation Française* and the *Bulletin Mensuel* of the Society supplement the *Annuaire de Législation Étrangère*, and the three publications furnish a fairly good review of world legislation.

The *Jahrbuch der Internationalen Vereinigung für Vergleichende Rechtswissenschaft und Volkswirtschaftslehre* does not attempt to publish texts of laws, and its reviews cover economic as well as legal matters. Although it attempts to review the legislation of all countries, it actually summarizes best the laws of the European countries, and hardly touches the British colonies and Spanish American republics; its treatment of Great Britain and the United States is slight, but its reviews of the legislation of the Slavic countries are superior to those of any other publication. The summaries and discussions of economic and legislative movements are prepared in most cases by foreign members of the *Vereinigung*; the articles are printed under the names of the respective authors without other editing than that of translation into German. Thus the arrangement of matter is by countries, and the publication has no index. Political and economic movements are rather fully discussed; the synopses of laws are usually full enough to indicate the contents of current legislation; the reviews of legal and economic literature are good. In the *Jahrbuch* are also published addresses and articles within the field of comparative legislation. The value of this publication is diminished by the delay in issuing the annual volumes; that for 1899 appeared in 1902 and in several cases reviewed legislation of 1898.

The *Anuario de Legislación Universal*, and the publication of which it is a supplement, are unique in that they attempt to publish texts not only of current legislation but

also of all existing statutory law. A private undertaking, without the foreign connections of a learned society, these publications are a striking illustration of what may be done in the field of comparative legislation. The *Colección de las Instituciones Políticas y Jurídicas de los Pueblos Modernos* gives full texts in Spanish of the codes and principal laws in force in the countries of Europe. A second series, of which only two volumes have been published, will give similar texts for all countries of North and South America. The *Anuario de Legislación Universal* was begun in 1895 under the title of *Complemento* of the *Colección*, the first volumes covering the years 1893 and 1894. Two annual volumes have been issued since that time; one prints new laws and codes of American countries; the other, new laws and codes of European countries. The American volumes treat very fully the Latin American countries, but almost entirely neglect the United States and Canada. The European volumes are very good for the most important countries of Continental Europe, Portugal, and the smaller states of Southeastern Europe, but Great Britain is inadequately treated, and the British Colonies are hardly touched. Since 1897 the current Spanish laws have been separately printed in the *Anuario de Legislación y jurisprudencia Españolas*. In the *Anuario de Legislación Universal* the matter is arranged by countries. Slight subject indexes in recent volumes make the texts fairly accessible but not easily so. Texts of codes and laws are published in full in practically all cases. The volumes do not appear promptly; those for 1898 appeared in 1899 and 1900, and the American volume for 1902 appeared in 1904. The *Revista de legislación Universal*, edited by the management of the *Anuario*, publishes brief notes of current legislation of all countries.

Of the three publications which avowedly attempt to cover the field of world legislation, two print the texts of laws and one reviews the contents of important legal enactments. None of these publications appears promptly enough to keep legislators informed of contemporary enactments, and none so completely reviews the legislation of all countries as to make its use satisfactory. In fact, the examination of all three publications fails to reveal information regarding much important legislation. Yet each is fairly thorough in its treatment of certain groups of countries.

The *Journal of the Society of Comparative Legislation* has an annual summary of British legislation which covers the colonies very thoroughly. Beginning with 1901 it has also published reviews of the legislation of several of the most important foreign countries. The colonial laws are summarized from the published texts by members of the Society residing in England. The summary is arranged by colonies, territorially grouped; a brief introduction indicates the most important legislation of the year, and a good subject index makes available all subjects reviewed under each colony. The annual review of legislation appears in one of the numbers of the *Journal* within the year after the year reviewed; more promptly than any of the attempted reviews of world legislation. The *Journal* also publishes articles upon subjects of comparative, colonial and foreign law.

The New York State Library's legislative bulletins are too well known to need much comment. Begun in 1891 with a slight summary of the State legislation of 1890, the undertaking has now expanded into three annual bulletins: *Comparative Summary and Index*, *Review of Legislation*, and *Digest of Governors' Messages*. The texts of Ameri-

can State laws are obtained as soon as issued, and summarized by a paid staff at the New York State Library; the prompt issue of the *Summary and Index* is thus made possible. In the more recent issues of this bulletin the laws have been fully summarized; the earlier summaries were so slight as to make the bulletin almost useless except as an index to the texts. The summary itself is arranged by subjects arbitrarily classified; a full subject index makes it possible to find all laws upon a given subject. The *Summary and Index* is indispensable to one who wishes to trace the legislative development of the American States during the past fifteen years.

Many important fields of comparative legislation are covered by government publications or by private undertakings. Several publications print current tariff laws. The *International Union for the Publication of Customs Tariffs* was formed by a convention of July 5, 1890, for the publication, at common expense, of tariff laws and their modifications.¹ A bureau was created at Brussels for the translation and publication of tariff laws. The *Bulletin International des douanes* appears in five languages, English, French, German, Italian and Spanish; it has not fulfilled its purpose of printing promptly and accurately the texts of tariff laws; the tariffs of some South American countries have been printed after they had ceased to be in force, and the English translations are bad. The *Annales du Commerce Extérieur*, published monthly by the French Ministry of Commerce, has been continuously issued since 1843. It gives the texts, in French, of the tariff laws of all countries. The *Bollettino di legislazione e statistica doganale e commerciale*, published by the Italian Ministry of Finance since 1883, does in Italian what the *Annales*

¹Martens: Nouveau Recueil des traités, 2d series, XVI, 532, 535.

du Commerce Extérieur does in French, but it prints also other laws of commercial interest. Since 1904 English translations of the most important tariffs have appeared in the *Monthly Summary of Commerce and Finance*, issued by the United States Bureau of Statistics.

The field of internal taxation is covered by two official publications: The *Bulletin de statistique et de législation comparée*, a monthly bulletin of the French Ministry of Finance; and the *Bollettino di statistica e di legislazione comparata*, published bi-monthly by the Italian Ministry of Finance. The French bulletin prints the texts of the most important foreign laws upon financial subjects; in its reviews of foreign financial movements it devotes especial attention to monetary and budgetary legislation. The Italian bulletin prints some foreign laws and publishes studies in comparative legislation upon financial and related subjects.

The general field of commercial law has been very well covered in German by the private collection of Borchardt, of which a new edition has been recently announced.¹ In the *Zeitschrift für das gesammte Handelsrecht* and the *Annales de droit commercial* appear reviews of current commercial legislation of important countries. The *Legislativer Teil* of the *Oesterreichisches Wirtschaftspolitisches Archiv*, issued monthly by the Austrian Ministry of Commerce, prints texts of important Austrian and foreign laws relating to patents, tariffs, railways, shipping and manufactures.

The excellent *Annuaire de la législation du travail* of the

¹Sammlung der geltenden Wechsel-und Handelsgesetzes aller Länder, Berlin, 1871, 2 bde.; Sammlung dem seit dem Jahre 1871 publicirten Wechselsgesetze, Berlin, 1883; Die geltende Handelsgesetze des Erdballs, Berlin, 1884-87, 5 bde.; Nachtrag, 1-4, Berlin, 1893-97; Die geltende Handelsgesetze des Erdballs, Hrsg. von Kohler, Meyer, Dove, 3d ed. 1906.

Belgian *Office du Travail* publishes with a fair degree of promptness the laws of all countries relating to labor. The *Bulletin de l'Office international du travail* (printed also in German as *Bulletin des Internationalen Arbeitssamts*) was begun in 1902 as the organ of the central office of the International Association for Labor Legislation. An English issue of the *Bulletin* is to be undertaken as soon as sufficient financial support can be obtained. The *Bulletin* prints promptly the texts or summaries of labor laws and regulations of all countries; each number is preceded by a summary of important legislation, and contains a careful bibliography. The *Bulletin du Comité permanent of the Congrès international des accidents du travail et des assurances sociales* gives the text of legislation relating to accidents to labor and labor insurance, and also publishes articles, notes of legislation and reviews of important books. The collections of Bellom and Zacher make available in French and German the texts of laws relating to labor insurance;¹ supplements to both collections have kept them well up to date.

The *Bulletin des Transports internationaux par chemins de fer* (*Zeitschrift für den internationalen Eisenbahntransport*) is published monthly by the *Office Central des transports internationaux des chemins de fer* at Berne. An annex to each number gives French and German texts of the railway laws and regulations of the countries which were parties to the Berne Convention of 1890 for the international regulation of railway transportation. Many of the laws do not appear as promptly as could be desired. In the text of the *Bulletin* are printed important decrees and judicial decisions affecting railways. The *Archiv für Eisenbahnwesen*, issued bi-monthly by the Prussian

¹Bellom: *Les lois d'assurance ouvrière à l'étranger*. Paris, 1892. Zacher: *Die Arbeiterversicherung im Auslande*. Berlin, 1898.

Ministry of Public Works, has a section devoted to legislation, and prints texts or summaries of the important railway laws of other countries. Although the laws are in most cases printed promptly, the Mexican railway law of 1899 did not appear until 1904.

The fields of literary and industrial property have also been very well covered. The *Bureau de l'Union internationale pour la protection des oeuvres littéraires et artistiques* has published a collection of treaties and conventions concerning literary and artistic property;¹ and *Le Droit d'Auteur*, its official publication, prints with a fair degree of promptness the texts of current treaties and laws relating to intellectual property. The collections of Lyon-Caen and Delalain, and of Röthlisberger make available the laws of all countries.² The *Bureau International de l' Union pour la protection de la propriété industrielle* has issued an excellent collection of laws and treaties concerning industrial property,³ and its organ, *La Propriété industrielle*, prints current laws, administrative regulations, and judicial decisions in this field. The *Annuaire de la propriété industrielle* reviews the legislation and judicial decisions of important countries concerning industrial property. The collection of patent laws by Gareis and Osterrieth contains all legislation in this field from 1871 to the present time,⁴ and the recently announced collection by Kohler will make available the laws now in force.⁵

¹Recueil des conventions et traités concernant la propriété littéraire et artistique. Berne, 1904.

²Lyon-Caen et Delalain: Lois françaises et étrangères sur la propriété littéraire et artistique. 2 vols. Paris. Supplement, Paris, 1896. Röthlisberger Gesetze über das Urheberrecht in allen Ländern. 2d ed. Leipzig, 1902.

³Recueil général de la législation et des traités concernant la propriété industrielle. 4 v. Berne, 1896-1901.

⁴Gareis und Osterrieth: Patentgesetzgebung. Bde. 1-12, Berlin, 1879-1904.

⁵Kohler, J. Patentgesetze aller Völker. Berlin, 1905.

In Criminal law the *Zeitschrift für die gesammte Strafrechtswissenschaft*, with its German translations of criminal codes of all countries, covers the field fairly well. The *Mitteilungen der internationalen kriminalistischen Vereinigung* contains important discussions of penal legislation. The translations of codes in the *Colección de las instituciones políticas y jurídicas* have already been mentioned; the French translations of codes made under the direction of the *Société* and *Comité de législation étrangère* are also of great importance to students of comparative legislation.

The texts of treaties and of other international documents are issued with reasonable promptness in numerous publications.¹ The *Institut Colonial International* of Brussels has published collections of laws in force in the various colonies on land systems, labor, colonial functionaries, mining, railroads and tariffs. Judicial decisions in the more important branches of the law are covered by Clunet's *Journal de droit International privé*, the *Revue de droit International privé*, and the *Zeitschrift für internationales Privat- und Oeffentliches Recht*, although the two latter periodicals confine themselves principally to France and Germany, respectively.

After this brief review of existing publications it will be well to inquire what are the problems involved in the proposed index of world legislation. Of greatest importance is the question of coördinating the current legislation which is indexed with the laws already in force in the various countries. The Spanish publication has indicated one method, that of printing in full texts of codes and important laws in force in all countries, but

¹Of these the most important are Marten's *Nouveau Recueil des Traités*, *Archives Diplomatiques*, and *das Staatsarchiv*; the *Recueil international des traités du xx^e Siècle*, edited by Descamps and Renault, also promises to be of great value.

such an undertaking would be impossible, and if possible, unsatisfactory.

As a preliminary to the main question it is necessary to discover what laws are in force in each legislative jurisdiction. A careful survey must be made of codes, legislative enactments, customary law, and subordinate legislation (administrative ordinances, etc.) in force in every country. The efforts of the English Society of Comparative Legislation are of interest in this connection. This society submitted to each British Colony a list of questions covering its (1) common law, (2) statute law, (3) method of legislation, (4) publication of statutes, (5) revision of statutes, (6) indexes to statute law, (7) consolidation and codification, (8) subordinate legislation—rules and orders, regulations, ordinances, etc.¹ With a definite knowledge of the laws in force in any jurisdiction it will be practicable to indicate the previous state of the law upon the various subjects by brief notes to the index of current legislation. To be most effective the index of legislation must indicate the legal setting of every new enactment, and the later treatises by which others may be made familiar with the actual situation. The summary itself would thus be a combination of index and bibliography. For the better use of the summary it should be preceded by a brief review of the most important world legislation of the year.

Turning now to the questions more intimately concerning the construction of the summary, we may consider (1) How fully should the laws be summarized? (2) What shall be the arrangement of matter in the summary? (3) What shall be done with regard to foreign technical terms which have no English equivalents?

(1) In handling the laws, three plans have been followed

¹Journal of the Society of Comparative Legislation, 1901, p. 264.

by existing publications; printing of the text itself, full summary, and brief index entry. The publication of the texts of all public laws is impossible, and is neither necessary nor desirable if all laws are collected at some one place within easy reach of, and available for use by, those desiring the full contents of any enactment. A brief entry would often be insufficient to indicate the purpose of the law. A rather full but not minute summary seems to be necessary to render such an index a real guide to the laws, and to make the publication useful to those who may wish to follow the trend of world legislation. Several of the existing publications have their reviews of legislation prepared by correspondents in the several countries, but to obtain uniformity of treatment and promptness of publication, it is necessary that the work of indexing should be done in some one place.

(2) The summary of laws might be arranged by countries or by subjects; the latter arrangement would be better adapted to practical use. But if a subject arrangement is agreed upon the question still remains whether there should be several great headings with all others classified within them, or whether a more purely alphabetical arrangement should be followed. The American lawyer hardly expects to find "marriage and divorce" under "civil law," and the publication must conform somewhat to the habits of its constituency. An alphabetical arrangement similar to the American Digest Classification Scheme would be necessary. If the publication were to be adapted to foreign as well as to American use, it would be possible to introduce cross-references from foreign technical terms, *e. g.*, "Arbeiterversicherung, *see* Insurance, sub-head Labor Insurance." If the summary is arranged by subjects, with sufficient cross-refer-

ences, the duty of an index to the summary would be to collect references to all laws of any country; the legislation of all countries upon any subject may be easily found in the summary itself; the index must make it possible to find as easily all the laws of any one country.

(3) In examining such a book as Wertheim's *Worterbuch des englischen Rechts* one is impressed with the fact that there are many English technical terms which have no German equivalents; so also are there many French and German technical terms which have no English equivalents. "A mortgage is not the equivalent of an *Hypothèque*; the *société en commandite* does not exist in England;" a partnership in English law has no exact counterpart in the countries of the civil law."¹ Yet the systems of legal terminology reduce themselves to two, that of the civil law, and that of the common law, and any difficulties would seem to be obviated by (1) cross-references in the summary from foreign terms for which no English equivalent exists, (2) translation of such terms into the nearest English equivalents, with the foreign technical term in parenthesis in the text, *e. g.*, if *Kommanditgesellschaft* were translated as "limited partnership" the text would appear: "Limited partnership (*Kommanditgesellschaft*);" if this translation were determined upon it would serve also for the French *Société en commandite*, for the Italian *Società in accomandita*, and for the Spanish *Compañía en coman-*
dita.

As has been indicated, there is certain work which must be done before a comprehensive index of world-legislation can be undertaken with any hope of success; and this work is of such a character that it should be undertaken were no such index in contemplation: (1) A careful survey must

¹Journal of the Society of Comparative Legislation, 1897, iv-vi.

be made of the laws in force in every legislative jurisdiction. In this matter the English Society has set the example. (2) The accumulation in one place of complete sets of laws, court reports and codes of all countries; and of the leading treatises upon the principal branches of the law of each country. (3) A careful subject catalogue of this material, so that the existing legislation in any country may be easily found. Only when this preliminary work is done will it be possible to undertake a comprehensive summary of comparative legislation.